HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.15653 OF 2007

Between:

M/s. Chebrolu Distributors,
Shop No.8, Balaji Complex,
Samarangam Chowk, Vijayawada – 520 001,
Rep., by its Proprietor, Sri Ch. Srinivas

…Petitioner

AND

The Deputy Commercial Officer – II,
Samarangam Chowk Circle,
Vijayawada I Division, Vijayawada,
Krishna District

...Respondent

: O R D E R :

Counsel for the petitioner : Shri P. Girish Kumar
Counsel for the respondent : Government Pleader for Commercial Taxes

July 31, 2007

Per G.S.SINGHVI, CJ

This petition is directed against assessment order dated 19-6-2007 passed by Deputy Commercial Tax Officer – II, Samarangam Chowk Circle, Vijayawada I Division, under the Andhra Pradesh Value Added Tax Act, 2005 (for short, 'the Act').

The petitioner is engaged in the business of distribution and sales of electrical goods i.e. fans manufactured and supplied by M/s.Khaitan Electricals Limited, Hyderabad. It is registered as dealer under the Andhra Pradesh Value Added Tax Act, 2005 (for short, 'the Act'). After issuing notice to the petitioner and considering its explanation, the respondent passed assessment order dated 19.6.2007 whereby he created tax liability of Rs.68,622/-.

The petitioner has challenged the order of assessment mainly on the ground of violation of the rules of natural justice and non-application of mind by the respondent.

We have heard Shri P. Girish Kumar and perused the record.

At the threshold, we asked Shri Girish Kumar as to why the petitioner has not availed the statutory remedy of appeal under Section 31 of the Act. In reply, learned counsel submitted that his client has directly approached the High Court because the assessment order and consequential notice issued on 27.6.2007 are per se illegal and contrary to the statutory provisions as well as the procedure prescribed under the Act.

In our opinion, the remedy of appeal available to the petitioner under Section 31 of the Act is an effective alternative remedy and there is no valid reason or justification for making a departure from the

settled law that the High Court will not entertain writ petition under Article 226 of the Constitution of India, if an effective alternative remedy is available to the petitioner. This rule has been applied with rigor in cases involving levy and collection of taxes, penalty etc. The Courts have repeatedly held that the remedy of appeal etc., available to the aggrieved person under the statute must ordinarily be treated as an effective alternative remedy and departure from the rule of alternative remedy should be made only when the impugned action or order is shown to be violative of the rules of natural justice or vires of some statutory challenge or where the action complained of is taken under a void statute –**A.V. Venkateshwaran v. R.S. Wadhwani**[1], **Thansingh Nathmal v. Superintendent of Taxes**[2], **Baburam v. Zilla Parishad**[3], **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[4], **Champa Lal v. I.T. Commissioner**[5], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[6], **C.I.T. v. Ramendra Nath Ghosh**[7], **Swadeshi Cotton Mills Co. Ltd., v. Government of U.P.**[8], **Gujarat University v. N.U. Rajguru**[9], **State of H.P. v. Raja Mahendra Pal**[10], **L.L. Sudhakar Reddy v. State of A.P.**[11], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[12], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[13], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.**[14].

In **Harbanslal Sahnia** (supra), the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: *i*) where the writ petition seeks enforcement of any of the fundamental rights; (*ii*) where there is failure of principles of natural justice; or (*iii*) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1}**. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

The petitioner's case does not fall within any of the exceptions enumerated in **Harbanslal**'s case (supra). Therefore, we do not see any reason to entertain the writ petition.

With the above observations, the writ petition is dismissed leaving the petitioner free to avail remedy by filing appeal under Section 31 of the Act.

As a sequel to dismissal of the writ petition, WPMP Nos.19847 and 19848 of 2007 filed by the petitioner for interim relief are also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

July 31, 2007

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[1] AIR 1961 SC 1506

[2] AIR 1964 SC 1419

[3] AIR 1969 SC 556

[4] (1983) 2 SCC 433

[5] AIR 1970 SC 645

[6] AIR 1970 SC 1980

[7] (1972) 4 SCC 379

[8] (1975) 4 SCC 378

[9] AIR 1988 SC 66

[10] (1999) 4 SCC 43

[11] (2001) 6 SCC 634

[12] (2002) 1 SCC 216

[13] (2003) 2 SCC 107

[14] (2004) 3 SCC 553